

SENATOR JUDITH B. ROBSON
CO-CHAIR

P.O. Box 7882
MADISON, WI 53707-7882
(608) 266-2253



REPRESENTATIVE GLENN GROTHMAN
CO-CHAIR

P.O. Box 8952
MADISON, WI 53708-8952
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**JOINT COMMITTEE FOR
REVIEW OF ADMINISTRATIVE RULES**

February 21, 2001

Senator Fred Risser
Senate President
Room 220 South

Representative Scott Jensen
Speaker of the Assembly
Room 211 West

Re: Emergency Rule ATCP 16
Emergency Rule PSC 2.06

Dear Senator Risser and Representative Jensen:

We are writing pursuant to § 227.24(2)(c), *Stats.*, to inform you that the Joint Committee for the Review of Administrative Rules (JCRAR) held a public hearing and executive session on February 20, 2001. At that meeting, the JCRAR received public testimony regarding the following emergency rules:

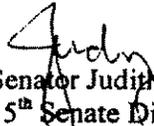
- Emergency Rule ATCP, relating to importing bovine animals, goats or cervids from a state designated by USDA as a tuberculosis "non-modified accredited" state; and
- Emergency Rule PSC 2.06, relating to procedures for the confidential treatment of documents.

Based on the public testimony at the hearing, the committee adopted a motion extending Emergency Rule ATCP for 60 days. The committee approved the motion on a 10 to 0 vote.

Based on the public testimony at the hearing, the committee adopted a motion extending Emergency Rule PSC 2.06 for 60 days. The committee approved the motion on a 10 to 0 vote.

We are giving you this notice of the committee's action pursuant to § 227.24(2)(c), *Stats.*, and we ask that you notify the appropriate standing committees of each house of the legislature of the JCRAR's actions.

Sincerely,


Senator Judith B. Robson
15th Senate District


Representative Glenn Grothman
59th Assembly District

JBR:GG:da

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**JOINT COMMITTEE FOR
REVIEW OF ADMINISTRATIVE RULES**

February 21, 2001

BY INTER-D

Secretary Jim Harsdorf
Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
Madison, WI

Re: Emergency Rule ATCP 16

Dear Secretary Harsdorf:

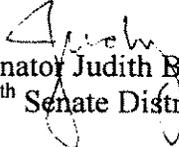
We are writing to inform you that the Joint Committee for Review of Administrative Rules (JCRAR) held a public hearing and executive session on February 20, 2001.

At that meeting, the JCRAR received public testimony regarding Emergency Rule ATCP 16, relating to importing bovine animals, goats or cervids from a state designated by USDA as a tuberculosis "non-modified accredited" state.

Based on that testimony, the committee adopted a motion extending the effective period of Emergency Rule ATCP 16 for 60 days. The committee approved the motion on a 10 to 0 vote.

Pursuant to § 227.24(2)(c), *Stats.*, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,


Senator Judith B. Robson
15th Senate District


Representative Glenn Grothman
59th Assembly District

JBR:GG:da

Emergency Rule ATCP 16



State of Wisconsin
Tommy G. Thompson, Governor

JAN 25 2001

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

January 23, 2001

The Honorable Judy Robson, Co-Chair
Joint Committee for
the Review of Administrative Rules
15 South State Capitol
Madison, WI 53702

The Honorable Glenn Grothman, Co-Chair
Joint Committee for
the Review of Administrative Rules
15 North State Capitol
Madison, WI 53702

Dear Representatives Robson and Grothman:

I am requesting that the Joint Committee for the Review of Administrative Rules grant another extension for the Department's emergency rule relating to importing bovine animals, goats or cervids from a state designated by USDA as a tuberculosis "non-modified accredited" state for an additional 60 days, until May 7, 2001. Without the extension, the emergency rule will end on March 8, 2001.

This emergency rule creates ATCP 16, which controls importing bovine animals, goats or cervids from a state designated by USDA as a tuberculosis "non-modified accredited" state. This rule protects humans and other warm-blooded animals from TB (bovine tuberculosis) by restricting the importation of animals from states that have diagnosed cases of TB in animals.

A copy of the original emergency order, including the finding of emergency, fiscal estimate and the notice of hearing is attached. Also attached is a copy of the extension request dated October 24, 2000.

The final draft of the permanent rule that incorporates the provisions of this emergency rule was approved by the DATCP Board on January 16, 2001.

We plan to submit the final draft rule for Legislative review by February 1, 2001. Because of the time required for legislative review, promulgation and publication, the department is requesting this extension.

Sincerely,

Ben Brancel
Secretary

Enclosures

**EMERGENCY ORDER
OF THE STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION
ADOPTING RULES**

- 1 The state of Wisconsin, department of agriculture, trade and consumer protection hereby
2 adopts the following emergency rule to create ATCP 16 relating to importing bovine
3 animals, goats or cervids from a state designated by USDA as a tuberculosis "non-
4 modified accredited" state.

**Analysis Prepared by the Department of Agriculture,
Trade and Consumer Protection**

Statutory Authority: s. 93.07(1), Stats.

Statutes Interpreted: ss. 93.07(10), 95.20 and 95.25, Stats.

In order to protect the public from bovine tuberculosis, this emergency rule restricts the importation of animals from states that the United States department of agriculture (USDA) has classified as "non-modified accredited."

Background

Bovine tuberculosis (TB) is an infectious disease caused by *Mycobacterium bovis* (*M. bovis*). It is generally described as a chronic debilitating disease of cattle but it may have an acute, rapidly progressive course. It can cause disease in most warm-blooded vertebrates, including humans. If TB becomes established in Wisconsin, it will pose a significant threat to the health of domestic animals and humans in the state.

The TB eradication program is administered jointly by the Wisconsin department of agriculture, trade and consumer protection (department) and the USDA. After several decades of intense effort, the disease was nearly eradicated in the United States. Recently the USDA reclassified Michigan from "accredited-free" to "non-modified accredited" because TB was confirmed in several cattle herds and in several native white-tailed deer. Because of the ease of transmission of TB; the substantial number of animals imported to Wisconsin; and because the last known incident of TB in a bovine animal in Wisconsin involved a bovine that was imported from Michigan, the department has determined that

Wisconsin needs to regulate the import of animals that originate from "non-modified accredited" states.

Pre-Import Requirements

Under this emergency rule, bovine animals, goats and cervids imported to Wisconsin from a tuberculosis "non-modified accredited" state must be accompanied by a certificate of veterinary inspection. The importer must obtain an import permit from the department.

The veterinarian who completes the certificate of veterinary inspection must certify that the animal originates from a herd in which a whole herd TB test has been completed within the last 12 months. The veterinarian must certify that the whole herd test included every animal over 6 months of age in the herd, and that all test results were negative.

An imported animal must be individually tested for tuberculosis within 60 days (90 days for a cervid) prior to the import date, unless the animal is less than 6 months old on the import date. The test may be performed as part of a whole herd test if the whole herd test is performed within 60 days (90 days for a cervid) prior to the import date.

Post-Import Testing

An animal imported to Wisconsin from a tuberculosis non-modified accredited state must be tested for tuberculosis not less than 90 days nor more than 120 days after it is imported. This testing requirement does not apply to feeder cattle that are confined to the receiving premises until they are shipped to slaughter. (The feeder cattle, when shipped to slaughter, must be accompanied by USDA form VS1-27.)

Post-Import Confinement

Animals imported to Wisconsin from a tuberculosis non-modified accredited state may not be commingled with any other animals in this state, or removed from the premises at which they are first received in this state, until they test negative for tuberculosis or are shipped to slaughter.

Exception

This emergency rule does not apply to animals that are imported directly to a slaughtering establishment for slaughter.

FINDING OF EMERGENCY

(1) Bovine tuberculosis is a contagious, infectious and communicable disease caused by *Mycobacterium bovis* (*M. bovis*). It affects cattle, bison, deer, elk, goats and

other species, including humans. Bovine tuberculosis in infected animals and humans manifests itself in lesions of the lung, bone, and other body parts. Bovine tuberculosis causes weight loss and general debilitation, and can be fatal.

(2) Wisconsin is currently classified by the United States Department of Agriculture (USDA) as "accredited-free" for tuberculosis.

(3) The USDA recently reclassified Michigan from "accredited-free" to "non-modified accredited," reflecting a higher risk of bovine tuberculosis.

(4) A significant number of bovine animals, goats and cervids are imported to Wisconsin from Michigan each year.

(5) The last known case of bovine tuberculosis in cattle in Wisconsin was confirmed in an animal imported from Michigan.

(6) If bovine tuberculosis becomes established in Wisconsin, it will pose a significant threat to the health of domestic animals and humans in this state.

(7) This emergency rule is needed to protect the public peace, health, safety and welfare. This emergency rule will help to control a serious disease in cattle, goats and cervids and will help protect the marketability of Wisconsin-raised animals.

EMERGENCY RULEMAKING ORDER

1 SECTION 1. Chapter ATCP 16 is created to read:

2 CHAPTER ATCP 16

3 IMPORTING ANIMALS FROM TUBERCULOSIS

4 "NON-MODIFIED ACCREDITED" STATES

5 ATCP 16.01 Definitions. In this chapter:

1 (1) "Bovine animal" has the meaning given in s. ATCP 11.01(11).

2 (2) "Certificate of veterinary inspection" has the meaning given in s. ATCP
3 11.01(17).

4 (3) "Cervid" has the meaning given in s. ATCP 11.01(18m).

5 (4) "Federal bureau" has the meaning given in s. ATCP 11.01(30).

6 (5) "Feeder cattle" has the meaning given in s. ATCP 11.01(31)

7 (6) "Herd" has the meaning given in s. ATCP 11.01(37).

8 (7) "Non-modified accredited state" means a state that the federal bureau has
9 classified as a bovine tuberculosis non-modified accredited state.

10 (8) "Originates from a herd" has the meaning given in s. ATCP 11.01(58).

11 (9) "Originates from a state" has the meaning given in s. ATCP 11.01(58m).

12 (10) "Slaughtering establishment" has the meaning given in s. ATCP 11.01(71).

13 (11) "State veterinarian" has the meaning given in s. ATCP 11.01(74).

14 (12) "Tuberculosis" has the meaning given in s. ATCP 11.01(80).

15 (13) "Whole herd test" means a test in which every animal 6 months of age or
16 older in a herd is tested for tuberculosis using an approved test.

17 ATCP 16.02 Bovine animals. (1) PRE-IMPORT REQUIREMENTS. No person may
18 import to this state any bovine animal that originates from a non-modified accredited
19 state unless all the following apply:

20 (a) The animal is accompanied by a valid certificate of veterinary inspection that
21 complies with ss. ATCP 11.02 and 11.11(1). The certificate shall include all the
22 following information:

23 1. The identification number of the import permit required under par. (b).

- 1 2. The whole herd test result required under par. (c).
- 2 3. The individual test result required under par. (d).
- 3 (b) The department issues an import permit under s. ATCP 11.03.
- 4 (c) The animal originates from a herd that has tested negative on a whole herd
- 5 test conducted within 12 months prior to the import date.
- 6 (d) The animal has tested negative on a tuberculosis test conducted within 60
- 7 days prior to the import date, or is less than 6 months old on the import date.

8 **NOTE:** USDA rules for interstate shipment of animals may specify a different
9 time period for tuberculosis testing prior to interstate shipment. An
10 importer must comply with USDA rules; however, compliance with
11 USDA rules does not excuse a violation of par. (d).

12
13 (2) POST-IMPORT TESTING. A bovine animal imported to this state from a non-
14 modified accredited state shall be tested for tuberculosis not less than 90 days nor more
15 than 120 days after it is imported. This testing requirement does not apply to feeder
16 cattle imported for feeding prior to slaughter if all the following apply:

17 (a) The feeder cattle are confined to the premises at which they are first received
18 in this state, until they are shipped to slaughter.

19 (b) The feeder cattle, when shipped to slaughter, are accompanied by a USDA
20 form VS1-27.

21 (3) POST-IMPORT CONFINEMENT. Bovine animals imported from a non-modified
22 accredited state may not be commingled with any other animals in this state, or removed
23 from the premises at which they are first received in this state, until one of the following
24 occurs:

25 (a) The animals test negative for tuberculosis under sub. (2).

26 (b) The animals are shipped to a slaughtering establishment for slaughter.

1 **(4) EXEMPTION.** This section does not apply to animals that are imported directly
2 to a slaughtering establishment for slaughter.

3 **ATCP 16.03 Goats: (1) PRE-IMPORT REQUIREMENTS.** No person may import to
4 this state any goat that originates from a non-modified accredited state unless all the
5 following apply:

6 **(a)** The goat is accompanied by a valid certificate of veterinary inspection that
7 complies with s. ATCP 11.02. The certificate shall include all the following information:

- 8 1. The identification number of the import permit required under par. (b).
9 2. The whole herd test result required under par. (c).
10 3. The individual test result required under par. (d).

11 **(b)** The department issues an import permit under s. ATCP 11.03.

12 **(c)** The goat originates from a herd that has tested negative on a whole herd test
13 conducted within 12 months prior to the import date.

14 **(d)** The goat has tested negative on a tuberculosis test conducted within 60 days
15 prior to the import date, or is less than 6 months old on the import date.

16 **NOTE:** USDA rules for interstate shipment of animals may specify a different
17 time period for tuberculosis testing prior to interstate shipment. An
18 importer must comply with USDA rules; however, compliance with
19 USDA rules does not excuse a violation of par. (d).
20

21 **(2) POST-IMPORT TESTING.** A goat imported from a non-modified accredited
22 state shall be tested for tuberculosis not less than 90 days nor more than 120 days after it
23 is imported.

24 **(3) POST-IMPORT CONFINEMENT.** Goats imported from a non-modified accredited
25 state may not be commingled with any other animals in this state, or removed from the

1 premises at which they are first received in this state, until the goat tests negative for
2 tuberculosis under sub. (2).

3 (4) EXEMPTION. This section does not apply to goats that are imported directly
4 to a slaughtering establishment for slaughter.

5 ACTP 16.04 Cervids. (1) PRE-IMPORT REQUIREMENTS. No person may import
6 to this state any cervid that originates from a non-modified accredited state unless all the
7 following apply:

8 (a) The cervid is accompanied by a valid certificate of veterinary inspection that
9 complies with s. ATCP 11.02. The certificate shall include all the following information:

10 1. The identification number of the import permit required under par. (b).

11 2. The whole herd test result required under par. (c).

12 3. The individual test result required under par. (d).

13 (b) The department issues an import permit under s. ATCP 11.03.

14 (c) The cervid originates from a herd that has tested negative on a whole herd test
15 conducted within 12 months prior to the import date.

16 (d) The cervid has tested negative on a tuberculosis test conducted within 90 days
17 prior to the import date, or is less than 6 months old on the import date.

18 NOTE: USDA rules for interstate shipment of animals may specify a different
19 time period for tuberculosis testing prior to interstate shipment. An
20 importer must comply with USDA rules; however, compliance with
21 USDA rules does not excuse a violation of par. (d).
22

23 (2) POST-IMPORT TESTING. A cervid imported from a non-modified accredited
24 state shall be tested for tuberculosis not less than 90 days nor more than 120 days after it
25 is imported.

1 (3) **POST-IMPORT CONFINEMENT.** Cervids imported from a non-modified
2 accredited state may not be commingled with any other animals in this state until the
3 cervid tests negative for tuberculosis under sub. (2).

4 (4) **EXEMPTION.** This section does not apply to cervids that are imported directly
5 to a slaughtering establishment for slaughter.

6 **EFFECTIVE DATE:** This emergency rule shall take effect on the day it is
7 published and shall remain in effect for 150 days. The department may seek to extend
8 this emergency rule as provided in s. 227.24, Stats.

Dated this 7 day of August, 2000.

**STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION**



Ben Brancel
Secretary

2000 Session

FISCAL ESTIMATE

DOA-2048 N(R 10/98)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No. / Adm. Rule No.
ATCP 16

Amendment No. (If Applicable)

Subject

DATCP emergency rule changes to chs. ATCP 16 relating to imports from non-modified accredited TB states.

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

Decrease Costs

Local: No local government costs

1. Increase Costs Permissive Mandatory
2. Decrease Costs Permissive Mandatory

3. Increase Revenues Permissive Mandatory
4. Decrease Revenues Permissive Mandatory

5. Types of Local Governmental Unit Affected:

Towns Villages Cities
 Counties Others
 School Districts WTCS Districts

Fund Source Affected

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

50.115 (9a)

Assumptions Used in Arriving at Fiscal Estimate

This emergency rule changes cattle, goat and Cervidae import health requirements for non-modified accredited states for tuberculosis. This rule will require a pre-entry import permit. This emergency rule also requires a whole herd negative TB test on the herd of origin within 12 months prior to import into WI. The rule also requires retesting of imported animals at owner's expense after importation. Animals will be quarantined until retesting is completed.

It is estimated that up to 20 alleged illegal import cases may require investigation and resolution during the period this emergency rule is in affect. Each case is expected to require 4.5 hours of employee time. Total cost will be approximately \$2,000. This time can be accommodated with existing staff and through reprioritization of work assignments in the field

Agency/prepared by: (Name & Phone No.)

[Signature]
DATCP Clarence Siroky 608-224-4872

Authorized Signature/Telephone No.

[Signature]
Barbara Knapp (608) 224-4746

Date

8/8/00

FISCAL ESTIMATE WORKSHEET

2000 SESSION

Detailed Estimate of Annual Fiscal Effect
DOA-2047 (R10/94)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No/Adm.Rule No.
ATCP 16

Amendment No.

Subject

Imports from non-modified accredited TB states

I. One-time Cost or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
\$2,000

II. Annualized Cost:		Annualized Fiscal Impact on State funds from:	
A. State Costs by Category		Increased Costs	Decreased Costs
State Operations - Salaries and Fringes			\$ -
(FTE Position Changes)		(FTE)	(- FTE)
State Operations - Other Costs			-
Local Assistance			-
Aids to Individuals or Organizations			-
TOTAL State Costs by Category			\$ -
B. State Costs by Source of Funds		Increased Costs	Decreased Costs
GPR		\$ 2,000	\$ -
FED			-
PRO/PRS			-
SEG/SEG-S			-
III. State Revenues - <small>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</small>		Increased Rev.	Decreased Rev.
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS			-
SEG/SEG-S			-
TOTAL State Revenues		\$	\$ -

NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$ 2,000	\$
NET CHANGE IN REVENUES	\$	\$

Agency Prepared by: (Name & Phone No.)
DATCP Clarence Siroky 608-224-4872

Authorized Signature/Telephone No.
Barbara Knapp
Barbara Knapp (608) 224-4746

Date
8/0/00

Emergency Rule ATCP 80

Relating to pathogen tests on ready-to-eat dairy products. Extension of the effective period of this emergency rule for 60 days at the request of the Department of Agriculture, Trade and Consumer Protection. First consideration.



State of Wisconsin
Scott McCallum, Governor

Department of Agriculture, Trade and Consumer Protection

James E. Harsdorf, Secretary

July 10, 2001

The Honorable Judy Robson, Co-Chair
Joint Committee for
the Review of Administrative Rules
15 South State Capitol
Madison, WI 53702

The Honorable Glenn Grothman, Co-Chair
Joint Committee for
the Review of Administrative Rules
15 North State Capitol
Madison, WI 53702

Dear Senator Robson and Representative Grothman:

Re: **Emergency Rule Extension – Pathogen Tests on Ready-to-Eat Dairy Products**

The Department of Agriculture, Trade and Consumer Protection asks the Joint Committee for the Review of Administrative Rules (JCRAR) to extend the above emergency rule, which is scheduled to expire on July 30, 2001. The department asks JCRAR to extend the emergency rule for 60 days, until September 28, 2001.

This emergency rule repeals a counterproductive pathogen test reporting requirement that discourages pathogen testing, because test reports become public records that may be open to public inspection even if the affected products are withheld from sale. The emergency rule creates alternatives that provide better public health protection and encourage more pathogen testing.

Under this rule, a dairy plant operator may not sell or distribute any ready-to-eat dairy product in which a microbiological test has confirmed the presence of a pathogenic organism or toxin. A dairy plant operator must report test results that confirm the presence of pathogens or toxins in ready-to-eat dairy products unless all the following apply:

- The tested product bears a product code or production lot number.
- The operator withholds, from sale or distribution, all ready-to-eat products that bear that product code or production lot number.

Under current rules, a dairy plant operator must keep records of all pathogen and toxin test results. This requirement is continued. DATCP may inspect and copy test records as necessary.

We are enclosing copies of the emergency rule, fiscal estimate and hearing notice. The emergency rule includes a *Finding of Emergency* that explains the need for this rule. The

Honorable Judy Robson
Honorable Glenn Grothman
July 10, 2001
Page 2

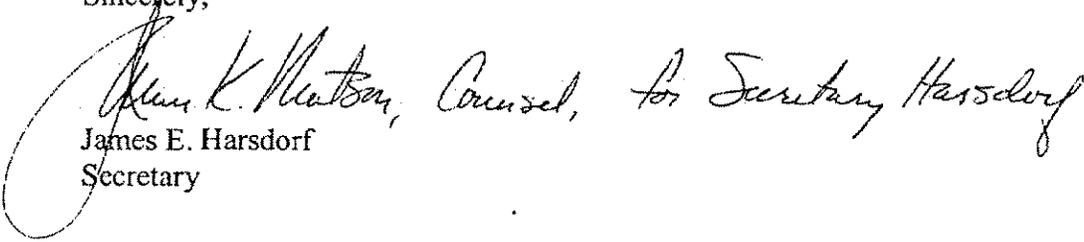
department has started "permanent" rulemaking proceedings, but will not be able to complete those proceedings before the emergency rule expires. The department is therefore asking JCRAR to extend the emergency rule.

The department held a public hearing on both the emergency rule and permanent rule on June 14 and 15, 2001. A total of 2 persons appeared in support of the rule. The department also received two written comments asking the department to qualify the phrase "test results that confirm the presence of a pathogenic organism or toxin" by adding the language "beyond established tolerance limits." The department will consider these comments when it adopts its "permanent" rule, but proposes no change in the emergency rule.

The Department plans to submit a final draft rule for DATCP Board approval in August, 2001. If the DATCP Board approves the final draft rule, we will refer it to the Legislature for review. Because of the time required for legislative review, promulgation and publication, the department will need to request a further JCRAR extension before this extension expires.

The department will have staff available to answer questions at the JCRAR meeting on this matter.

Sincerely,


James E. Harsdorf
Secretary

Enclosures



State of Wisconsin
Scott McCallum, Governor

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

DATE: February 23, 2001

TO: State Legislators

FROM: Ben Brancel, Secretary

FEB 26 2001

Handwritten signature: Aust Zimmerman

SUBJECT: Emergency Rule Related to Pathogen Tests on Ready-to-Eat Dairy Products

Pursuant to s. 227.24(3), Stats., the Department of Agriculture, Trade and Consumer Protection (DATCP) is forwarding a copy of an emergency rule related to pathogen tests on ready-to-eat dairy products. DATCP believes that this emergency rule will provide better public health protection and encourage dairy plants to perform more pathogen tests. It will also facilitate sales of Wisconsin dairy products.

Background

DATCP licenses and inspects dairy plants under s. 97.20, Stats. Current DATCP rules under s. ATCP 80.56(4), Wis. Adm. Code, require dairy plant operators to report to DATCP the results of any microbiological test that confirms the presence of a pathogenic organism in a pasteurized or ready-to-eat dairy product. The current reporting requirement discourages pathogen testing, because test reports become public records that may be open to public inspection even if the affected products are withheld from sale.

This emergency rule repeals this counterproductive reporting requirement, and creates alternative rules that will provide better public health protection and encourage more pathogen testing. Under this rule:

- A dairy plant operator may not sell or distribute any ready-to-eat dairy product in which a microbiological test has confirmed the presence of a pathogenic organism or toxin.
- A dairy plant operator must report test results that confirm the presence of pathogens or toxins in ready-to-eat dairy products *unless* all the following apply:
 - * The tested product bears a product code or production lot number.
 - * The operator withholds, from sale or distribution, all ready-to-eat products that bear that product code or production lot number.

Under current rules, a dairy plant operator must keep records of all pathogen and toxin test results. This requirement will continue. DATCP may inspect and copy test records as necessary.

Why an Emergency Rule is Needed

Many dairy product distributors are currently asking dairy plant operators to perform pathogen tests on dairy products, before the distributors accept those products from the dairy plant operators. Many dairy plant operators are willing to perform these tests, but they are discouraged by current rules that require them to report test results to DATCP – even on products withheld from sale.

This emergency rule will remove the disincentive to test, and will improve public health protection. Under this rule, a dairy plant operator must report pathogen findings to DATCP *unless* the operator withholds the entire affected lot of dairy products from sale. This rule will encourage more routine testing for pathogens.

This rule creates a “win-win” situation for consumers and dairy plant operators. By encouraging more pathogen testing, it will provide immediate public health benefits. It will also eliminate current obstacles to the sale of Wisconsin dairy products. In order to protect the public health, safety and welfare, it is important to implement these rule changes as soon as possible. This emergency rule will implement the changes on an interim basis, pending the adoption of “permanent” rules.

Fiscal Effect

This rule will have no fiscal effect on DATCP or local units of government. A fiscal note is attached.

Next Steps

This emergency rule will take effect upon publication in the official state newspaper, and will remain in effect for 150 days. The Legislature’s Joint Committee for Review of Administrative Rules may extend the emergency rule for up to 120 more days. DATCP will begin work on “permanent” rules to implement this rule change on a long term basis.

**ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
ADOPTING EMERGENCY RULES**

1 The state of Wisconsin department of agriculture, trade and consumer protection hereby adopts
2 the following emergency rule to repeal ATCP 80.56(4); to renumber ATCP 80.56(intro.) and (1)
3 to (3); and to create ATCP 80.24(5) and 80.56(2); relating to pathogen tests on ready-to-eat dairy
4 products.

**Analysis Prepared by the Department of Agriculture,
Trade and Consumer Protection**

Statutory authority: ss. 93.07(1), 97.09(4) and 97.20(4), Stats.
Statute interpreted: ss. 97.09(4) and 97.20(4), Stats.

The Department of Agriculture, Trade and Consumer Protection (DATCP) licenses and inspects dairy plants under s. 97.20, Stats. Current DATCP rules under s. ATCP 80.56(4), Wis. Adm. Code, require dairy plant operators to report to DATCP the results of any microbiological test that confirms the presence of a pathogenic organism in a pasteurized or ready-to-eat dairy product. The current reporting requirement discourages pathogen testing, because test reports become public records that may be open to public inspection even if the affected products are withheld from sale.

This emergency rule repeals this counterproductive reporting requirement, and creates alternative rules that will provide better public health protection and encourage more pathogen testing. Under this rule:

- A dairy plant operator may not sell or distribute any ready-to-eat dairy product in which a microbiological test has confirmed the presence of a pathogenic organism or toxin.
- A dairy plant operator must report test results that confirm the presence of pathogens or toxins in ready-to-eat dairy products unless all the following apply:
 - * The tested product bears a product code or production lot number.
 - * The operator withholds, from sale or distribution, all ready-to-eat products that bear that product code or production lot number.

Under current rules, a dairy plant operator must keep records of all pathogen and toxin test results. This requirement will continue. DATCP may inspect and copy test records as necessary.

FINDING OF EMERGENCY

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) finds that an emergency exists and that the following emergency rule is necessary to protect public health, safety and welfare. The facts constituting the emergency are as follows:

(1) DATCP licenses and inspects dairy plants under s. 97.20, Stats. Current DATCP rules, under s. ATCP 80.56(4), Wis. Adm. Code, require dairy plant operators to report to DATCP the results of any microbiological test that confirms the presence of a pathogenic organism in a pasteurized or ready-to-eat dairy product.

(2) There has been a nationwide increase in food borne disease outbreaks associated with food and dairy products. Such outbreaks can occur when ready-to-eat foods enter food distribution channels without being tested for pathogenic bacteria.

(3) There is no national or state law requiring dairy plant operators to test ready-to-eat dairy products for pathogens prior to sale or distribution. Dairy plant operators have a natural incentive to test, in order to avoid liability and meet their customers' product safety demands. But the current test reporting requirement under ATCP 80.56(4) discourages pathogen testing, because test reports become public records that may be open to public inspection even if the affected products are withheld from distribution.

(4) There is an urgent need to repeal this counterproductive reporting requirement, and to create alternative rules that will encourage pathogen testing and provide stronger public health protection. This emergency rule will encourage more pathogen testing, and provide stronger public health protection, pending the adoption of "permanent" rule changes.

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EMERGENCY RULE

SECTION 1. ATCP 80.24(title) is amended to read:

ATCP 80.24(1)(title) **Milk and dairy products; quality standards**

SECTION 2. ATCP 80.24(5) is created to read:

ATCP 80.24(5) **PATHOGEN CONFIRMED IN READY-TO-EAT DAIRY PRODUCT; SALE PROHIBITED.** A dairy plant operator may not sell or distribute any ready-to-eat dairy product in which a microbiological test or laboratory analysis has confirmed the presence of a pathogenic organism or toxin.

SECTION 3. ATCP 80.56(intro.) and (1) to (3) are renumbered ATCP 80.56(1)(intro.) and (a) to (c).

SECTION 4. ATCP 80.56(4) is repealed.

SECTION 5. ATCP 80.56(2) is created to read:

ATCP 80.56(2)(a) Except as provided in par. (b), a dairy plant operator shall report to the department the result of any microbiological test or laboratory analysis that confirms the presence of a pathogenic organism or toxin in a ready-to-eat dairy product produced by the operator. The operator shall report to the department within 24 hours after the operator obtains the test result. The operator may report orally, electronically or in writing.

(b) A dairy plant operator is not required to report a test result under par. (a) if all the following apply:

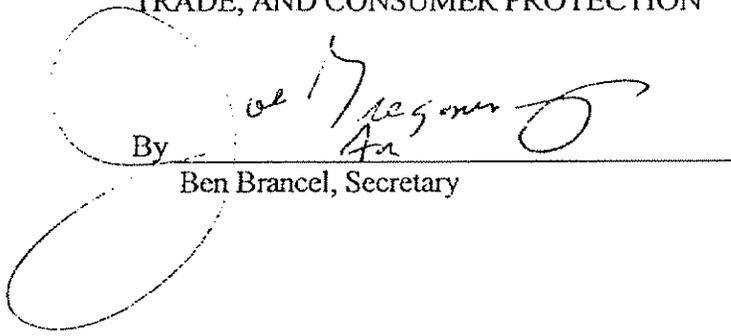
1. The ready-to-eat dairy product is identified by a product code or production lot number.
2. The operator does not sell or distribute any ready-to-eat dairy product that bears the product code or production lot number under subd. 1.

1 **EFFECTIVE DATE.** The emergency rule contained in this order shall take effect on March
2 1, 2001, and shall remain in effect for 150 days, as provided under s. 227.24(1)(c), Stats. The
3 department may seek to extend this emergency rule as provided in s. 227.24(2), Stats.

Dated this 26th of February, 2001

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE, AND CONSUMER PROTECTION

By



Ben Brancel, Secretary

Fiscal Estimate — 1999 Session

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number Ch. ATCP 80

Subject

Emergency rule to repeal ATCP 80.56(4) and to create ATCP 80.24(4) and 80.56(2); relating to pathogen tests on ready-to-eat dairy products.

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

- Increase Costs — May be possible to absorb within agency's budget.
 Yes No
 Decrease Costs

Local: No Local Government Costs

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations

20.115(1)(gb)

Assumptions Used in Arriving at Fiscal Estimate

The Department of Agriculture, Trade and Consumer Protection ("department") licenses and inspects dairy plants under Wis. Stats. § 97.20. Under s. 80.56(4), Wis. Admin. Code, the department requires the dairy plant operator to report to the department results of any microbiological test conducted on a pasteurized or ready-to-eat dairy product that confirms the presence of pathogenic organisms in that product. The current reporting requirement discourages pathogen testing, because test reports become public records that may be open to public inspection even if the affected products are withheld from sale.

This emergency rule repeals this counterproductive reporting requirement, and creates alternative rules that will provide better public health protection and encourage more pathogen testing.

The proposed emergency rule has no anticipated fiscal impact on the department.

Long-Range Fiscal Implications

None anticipated.

Prepared By:	Telephone No	Agency
C. Thomas Leitzke	(608) 224-4711	DATCP
Authorized Signature	Telephone No ²²⁴⁻	Date (mm/dd/ccyy)
<i>Barbara Knapp</i>	224-4711 ⁴⁷⁴⁶	2-23-01

**STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION**

NOTICE OF HEARING

Rules Relating To Pathogen Tests On Ready-To-Eat Dairy Products

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings, at the times and places indicated below, on its emergency rule and a proposed permanent rule to amend Chapter ATCP 80, Wisconsin Administrative Code, relating to pathogen tests on ready-to-eat dairy products. The public is invited to attend the hearings and make comments on the the emergency rule and proposed permanent rule. Following the public hearings, the hearing record will remain open until June 29, 2001, for additional written comments.

A copy of the emergency and proposed permanent rule may be obtained, free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, PO Box 8911, Madison, WI 53708-8911, or by calling 608-224-4700. Copies will also be available at the public hearings.

An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by June 7, 2001 either by writing to Debbie Mazanec, Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, PO Box 8911, Madison, WI 53708-8911, (608-224-4712), or by contacting the message relay system (TTY) at 608-224-5058. Handicap access is available at the hearing locations.

Hearing Dates, Times And Locations

Date and Time: Thursday, June 14, 2001
 10:00 a.m. – 12:00 noon

Location: Appleton Public Library
 Lower Level Mtg. Room
 925 S. Oneida Street
 Appleton, WI 54911
 Handicapped accessible

Date and Time: Friday, June 15, 2001
 10:00 a.m. - 12:00 noon

Location: Iowa County Courthouse
 County Board Room, 2nd Floor
 222 N. Iowa Street
 Dodgeville, WI 53533
 Handicapped accessible

**Analysis Prepared by the Department of Agriculture,
Trade and Consumer Protection**

Statutory authority: ss. 93.07(1), 97.09(4) and 97.20(4), Stats.
Statute interpreted: ss. 97.09(4) and 97.20(4), Stats.

The Department of Agriculture, Trade and Consumer Protection (DATCP) licenses and inspects dairy plants under s. 97.20, Stats. Current DATCP rules under s. ATCP 80.56(4), Wis. Adm. Code, require dairy plant operators to report to DATCP the results of any microbiological test that confirms the presence of a pathogenic organism in a pasteurized or ready-to-eat dairy product. The current reporting requirement discourages pathogen testing, because test reports become public records that may be open to public inspection even if the affected products are withheld from sale.

This emergency and proposed permanent rule repeals this counterproductive reporting requirement, and creates alternative rules that will provide better public health protection and encourage more pathogen testing. Under this rule:

- A dairy plant operator may not sell or distribute any ready-to-eat dairy product in which a microbiological test has confirmed the presence of a pathogenic organism or toxin.
- A dairy plant operator must report test results that confirm the presence of pathogens or toxins in ready-to-eat dairy products unless all the following apply:
 - * The tested product bears a product code or production lot number.
 - * The operator withholds, from sale or distribution, all ready-to-eat products that bear that product code or production lot number.

Under current rules, a dairy plant operator must keep records of all pathogen and toxin test results. This requirement will continue. DATCP may inspect and copy test records as necessary.

Finding Of Emergency

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) finds that an emergency exists and that the following emergency rule is necessary to protect public health, safety and welfare. The facts constituting the emergency are as follows:

(1) DATCP licenses and inspects dairy plants under s. 97.20, Stats. Current DATCP rules, under s. ATCP 80.56(4), Wis. Adm. Code, require dairy plant operators to report to DATCP the results of any microbiological test that confirms the presence of a pathogenic organism in a pasteurized or ready-to-eat dairy product.

(2) There has been a nationwide increase in food borne disease outbreaks associated with food and dairy products. Such outbreaks can occur when ready-to-eat foods enter food distribution channels without being tested for pathogenic bacteria.

(3) There is no national or state law requiring dairy plant operators to test ready-to-eat dairy products for pathogens prior to sale or distribution. Dairy plant operators have a natural incentive to test, in order to avoid liability and meet their customers' product safety demands. But the current test reporting requirement under ATCP 80.56(4) discourages pathogen testing, because test reports become public records that may be open to public inspection even if the affected products are withheld from distribution.

(4) There is an urgent need to repeal this counterproductive reporting requirement, and to create alternative rules that will encourage pathogen testing and provide stronger public health protection. This emergency rule will encourage more pathogen testing, and provide stronger public health protection, pending the adoption of "permanent" rule changes.

Fiscal Estimate

The Department of Agriculture, Trade and Consumer Protection ("department") licenses and inspects dairy plants under Wis. Stats. ss 97.20. Under s. 80.56(4), Wis. Admin. Code, the department requires the dairy plant operator to report to the department results of any microbiological test conducted on a pasteurized or ready-to-eat dairy product that confirms the presence of pathogenic organisms in that product. The current reporting requirement discourages pathogen testing, because test reports become public records that may be open to public inspection even if the affected products are withheld from sale.

The emergency rule and proposed permanent rule repeals this counterproductive reporting requirement, and creates alternative rules that will provide better public health protection and encourage more pathogen testing.

The emergency rule and proposed permanent rule has no anticipated fiscal impact on the department.

Initial Regulatory Flexibility Analysis

The Department of Agriculture, Trade and Consumer Protection (DATCP) licenses and inspects dairy plants under s. 97.20, Stats. Current DATCP rules under s. ATCP 80.56(4), Wis. Adm. Code, require dairy plant operators to report to DATCP the results of any microbiological test that confirms the presence of a pathogenic organism in a pasteurized or ready-to-eat dairy product. The current reporting requirement discourages pathogen testing, because test reports become public records that may be open to public inspection even if the affected products are withheld from sale.

The proposed rule repeals this counterproductive reporting requirement, and creates alternative rules that will provide better public health protection and encourage more pathogen testing. The proposed changes are already in effect under an emergency rule which the department adopted. This rule will make the temporary rule changes permanent. Under this rule:

- A dairy plant operator may not sell or distribute any ready-to-eat dairy product in which a microbiological test has confirmed the presence of a pathogenic organism or toxin.
- A dairy plant operator must report test results that confirm the presence of pathogens or toxins in ready-to-eat dairy products unless all the following apply:
 - * The tested product bears a product code or production lot number.
 - * The operator withholds, from sale or distribution, all ready-to-eat products that bear that product code or production lot number.

Under current rules, a dairy plant operator must keep records of all pathogen and toxin test results. This rule requires no additional recordkeeping or other procedures for dairy plants. Small dairy plants will need no additional professional skills or assistance in order to comply with this rule.

This permanent rule will have minimal financial impact on the dairy industry.

Dated this 14 of May, 2001

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE, AND CONSUMER PROTECTION

By James E. Harsdorf
James E. Harsdorf
Secretary

SENATOR JUDITH B. ROBSON
CO-CHAIR



REPRESENTATIVE GLENN GROTHMAN
CO-CHAIR

P.O. Box 7882
MADISON, WI 53707-7882
(608) 266-2253

P.O. Box 8952
MADISON, WI 53708-8952
(608) 264-8486

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

January 25, 2001

Ben Brancel, Secretary
Department of Agriculture, Trade, and Consumer Protection
2811 Agriculture Drive
Madison, WI 53704

Dear Secretary Brancel:

The Joint Committee for the Review of Administrative Rules met in Executive Session on January 24, 2001 and adopted the following motion:

Moved by Representative Grothman, seconded by Senator Cowles that, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extends ATCP 134.06(3)(d) at the request of Department of Agriculture, Trade, and Consumer Protection by 60 days.

Ayes: (10) Representatives Grothman, Seratti,
Gunderson, Kreuser and Turner; Senators Robson,
Grobschmidt, Hansen, Schultz and Cowles.

Noes: (0)
Absent: (0)

Motion Carried 10 Ayes, 0 Noes, 0 Absent.

Pursuant to s. 227.24(2)(c) Stats, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,


JUDITH B. ROBSON
Senate Co-Chair


GLENN GROTHMAN
Assembly Co-Chair

JBR:GSG:mjg

Cc: Secretary of State Doug LaFollette
Revisor of Statutes Gary Poulson



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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

January 25, 2001

The Honorable Fred Risser
Senate President
State Capitol Building, Room 220 South
Madison, WI 53702

The Honorable Scott Jensen
Assembly Speaker
State Capitol Building, Room 211 West
Madison, WI 53702

Dear President Risser and Speaker Jensen:

The Joint Committee for the Review of Administrative Rules met in Executive Session on January 24, 2001 and adopted the following motions:

ATCP 134.06(3)

Relating to residential rental practices (security deposits and carpet cleaning.)

Moved by Representative Grothman, seconded by Senator Cowles that, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extends ATCP 134.06(3)(d) at the request of Department of Agriculture, Trade, and Consumer Protection by 60 days.

Ayes: (10) Representatives Grothman, Seratti,
Gunderson, Kreuser and Turner; Senators Robson,
Grobschmidt, Hansen, Schultz and Cowles.

Noes: (0)

Absent: (0)

Motion Carried 10 Ayes, 0 Noes, 0 Absent.

HFS 79

Relating to Supplemental Security Income Payments.

Moved by Representative Seratti, seconded by Representative Grothman that, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extends HFS 79 at the request of Department of Health and Family Services by 15 days.

Ayes: (10) Representatives Grothman, Seratti,
Gunderson, Kreuser and Turner; Senators Robson,
Grobschmidt, Hansen, Schultz and Cowles.

Noes: (0)

Absent: (0)

Motion Carried 10 Ayes, 0 Noes, 0 Absent.

Joint Rules

Relating to conducting an executive session.

Moved by Representative Grothman, seconded by Senator Cowles that, the Joint Committee for Review of Administrative Rules cast votes in executive session under the following rules:

1. A majority of the members appointed to the committee shall be physically present when a vote is taken, regardless of whether the action of the committee is taken through a roll call or by unanimous consent. The committee may not take action when a majority of the members appointed to the committee are not physically present.
2. If a vote is taken by roll call, the roll shall be held open for absent members for one hour following the adjournment of the committee. A member who votes in the hour following the adjournment of the committee shall be recorded as absent, but voting, and the vote may affect the outcome of the committee's decision.
3. A member who does not vote in the presence of the committee or within one hour following the adjournment of the committee shall be recorded as absent.

Ayes: (10) Representatives Grothman, Seratti, Gunderson, Kreuser and Turner; Senators Robson, Grobschmidt, Hansen, Schultz and Cowles

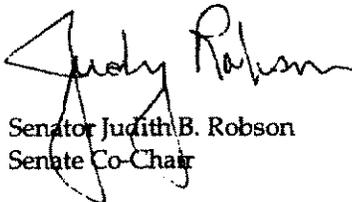
Noes: (0)

Absent: (0)

Motion Carried 10 Ayes, 0 Noes, 0 Absent.

Pursuant to s. 227.24(2)(c), stats., as treated by 1997 Wisconsin Act 185, please forward a copy of this notice to the chairperson of the standing committee in your respective house most likely to have jurisdiction over the Clearinghouse Rule corresponding to this emergency rule.

Sincerely,



Senator Judith B. Robson
Senate Co-Chair

JBR:GSG:mjg

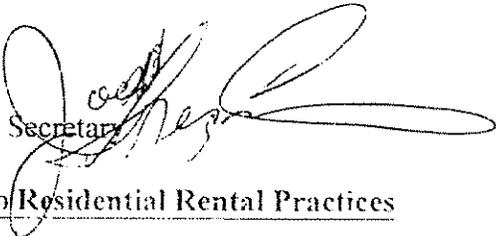


Representative Glenn Grothman
Assembly Co-Chair



State of Wisconsin
Tommy G. Thompson, Governor

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

DATE: July 13, 2000
TO: State Legislators
FROM: Joseph E. Tregoning, Deputy Secretary 
SUBJECT: Emergency Rule Relating to Residential Rental Practices

Pursuant to s. 227.24(3), Stats., the Department of Agriculture, Trade and Consumer Protection is forwarding a copy of an emergency rule relating to residential rental practices. The department is adopting this emergency rule at the direction of the Joint Committee for Review of Administrative Rules (JCRAR).

The department administers state landlord-tenant rules contained in ch. ATCP 134, Wis. Adm. Code. These rules affect over 1.5 million Wisconsin residents. This emergency rule modifies current residential rental practices rules related to security deposit withholding.

Under current rules, a landlord may not withhold a security deposit for normal wear and tear, or for other damages or losses for which the tenant cannot reasonably be held responsible. A "note" to s. ATCP 134.06(3)(c) also states that a landlord may not withhold from a tenant's security deposit for routine painting or carpet cleaning, where there is no unusual damage caused by tenant neglect.

On June 21, 2000, the Legislature's Joint Committee for Review of Administrative Rules (JCRAR) found that the "note" to s. ATCP 134.06(3)(c) is actually a rule and directed DATCP to adopt the "note" as an emergency rule. According to s. 227.26(2)(b), Stats., DATCP must promulgate the emergency rule under s. 227.24(1)(a), Stats., within 30 days after the JCRAR directs DATCP to do so. Because the JCRAR has directed DATCP to adopt this emergency rule, DATCP is not required to make any other finding of emergency.

Fiscal Effect

This emergency rule will have no fiscal effect on state or local government.

Next Steps

An emergency rule is a temporary rule that takes effect upon publication in the official state newspaper. An emergency rule remains in effect for 150 days, unless extended by or suspended by the JCRAR. The department will hold a public hearing on the emergency rule as required by chapter 227, Stats. The department has not yet determined the hearing date, time and location, but will publish a hearing notice as required by chapter 227, Stats.

The department is also planning to develop a "permanent" rule to clarify current rules related to security deposits and carpet cleaning charges. The department will consult with landlord and tenant groups in an effort to resolve, on a more "permanent" basis, current disagreements related to state policy on security deposit withholding and routine carpet cleaning charges.

Enc.

EMERGENCY RULEMAKING ORDER

SECTION 1. ATCP 134.06(3)(c)(note) is repealed.

SECTION 2. ATCP 134.06(3)(d) is created to read:

ATCP 134.06(3)(d) A landlord may not withhold from a tenant's security deposit for routine painting or carpet cleaning, where there is no unusual damage caused by tenant abuse

EFFECTIVE DATE. The emergency rule contained in this order shall take effect upon publication, and shall remain in effect for 150 days. The department may seek to extend this emergency rule as provided in s. 227.24, Stats.

April 16, 2001

Senator Judy Robson
Co-Chair
Joint Committee for Review of Administrative Rules
Room 15 South, Capitol

Representative Glenn Grothman
Co-Chair
Joint Committee for Review of Administrative Rules
Room 15 North, State Capitol

Dear Senator Robson and Representative Grothman:

As you may know, this Department adopted an emergency rule on December 28 of last year for chapter Comm 10, relating to Flammable and Combustible Liquids. The specific effect of the rule was to give an extension for required environmental protection upgrades to owners of certain bulk tanks due to concerns over the availability of heating oil over this past winter. The emergency rule took effect on January 6, 2001 and will expire on June 4, 2001, unless an extension is granted by the Committee.

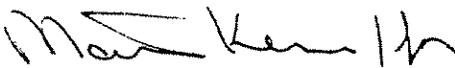
Since the emergency rule simply created a narrow window for owners to take advantage of the extension, no permanent rule is deemed necessary. However, the rule institutes a new deadline of August 1, 2001 for compliance. To avoid any possible confusion, the department is requesting one 60-day extension of this emergency rule, which would extend the effective date of the rule to August 4, 2001.

In light of these facts, we respectfully request the Joint Committee for Review of Administrative Rules to grant a 60-day extension of the emergency rule under s. 227.24 (2), Stats.

If you have any questions regarding this request, please don't hesitate to contact us. Thank you in advance for your consideration of our request.

A copy of the emergency rule is enclosed.

Sincerely,



Brenda J. Blanchard
Secretary

Enc.

DEPARTMENT OF COMMERCE

EMERGENCY RULE RELATING TO THE EFFECTIVE DATE OF REQUIRED UPGRADES
TO ABOVEGROUND BULK TANKS THAT WERE IN EXISTENCE ON MAY 1, 1991.

Finding of Emergency and Rule Analysis

The Department of Commerce finds that an emergency exists and that the adoption of the rule included in this order is necessary for the immediate preservation of public health, safety and welfare. The facts constituting the emergency are as follows:

Wisconsin Administrative Code Chapter Comm 10, Flammable and Combustible Liquids Code, became effective on 5/1/91. Section Comm 10.345 (2) contains requirements for bulk tanks in existence on that date to be provided with specific containment or leak detection upgrades within 10 years of that date. Some concerns have been expressed on the impact that compliance date could have on heating oil supplies and prices this winter. Construction requirements could result in a substantial number of tanks storing heating oil to be closed during the winter heating season in preparation for the required upgrades.

Based on these concerns, the department has agreed to extend the compliance deadline for 3 months until 8/1/01 if approvable tank system upgrade plans have been submitted to the department by 2/1/01.

These rules are therefore adopted as emergency rules to take effect immediately following publication in the official state newspaper and filing with the Secretary of State and Revisor of Statutes, as provided in section 227.24, Stats.

Dated at Madison, Wisconsin this 28th

day of December, A.D. 2000.

Department of Commerce.



Brenda J. Blanchard, Secretary

SECTION 1. Comm 10.345 (2) (intro.) is amended to read:

Comm 10.345 (2) (intro.) ~~Aboveground~~ Except as provided in par. (e), aboveground outside storage tanks which exceed 5,000 gallons capacity and which were installed prior to May 1, 1991 shall be brought into compliance with either par. (a), (b), (c) or (d) within 10 years of May 1, 1991.

SECTION 2. Comm 10.345 (2) (e) is created to read:

Comm 10.345 (2) (e) 1. a. Tank owners and operators who have not complied with either par. (a), (b), (c) or (d) may operate their existing aboveground bulk storage tank systems through July 31, 2001 only if they have approvable plans for their tank system upgrade submitted to the department by February 1, 2001.

b. Plans submitted under subparagraph a., for an installation that is a consolidation of multiple systems or bulk storage sites, are not approvable unless all the site locations associated with the consolidation are identified by facility name, location and commerce tank regulated objects number in a cover letter submitted with the plans.

2. Tank owners and operators who do not have approvable plans submitted to the department by February 1, 2001 shall take tanks that do not comply with either par. (a), (b), (c) or (d) out of service no later than May 1, 2001 and immediately empty and close the tanks.

3. For the purposes of this section, approvable plans are plans that comply with the specific requirements of this section and the applicable requirements under s. Comm 10.10.

END

SENATOR JUDITH B. ROBSON
CO-CHAIR



REPRESENTATIVE GLENN GROTHMAN
CO-CHAIR

P.O. Box 7882
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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

May 30, 2001

Brenda Blanchard, Secretary
Department of Commerce
123 West Washington Avenue
Madison, WI 53707-7970

Dear Secretary Blanchard:

The Joint Committee for the Review of Administrative Rules met in Executive Session on May 30, 2001 and adopted the following motion:

Emergency Rule COMM 10

Relating to flammable and combustible liquids. Submitted by the Department of Commerce.

Moved by Representative Grothman, seconded by Representative Turner that, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extends Comm 10 at the request of Department of Commerce by 60 days.

Ayes: (10) Representatives Grothman, Seratti,
Gunderson, Turner, and Hebl; Senators Robson, Grobschmidt,
Hansen, Schultz and Cowles.

Noes: (0)

Absent: (0)

Motion Carried 10 Ayes, 0 Noes, 0 Absent.

Pursuant to s. 227.24(2)(c) Stats, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,

Senator Judith B. Robson
Senate Co-Chair

Representative Glenn Grothman
Assembly Co-Chair

JBR:GSG:mjg

cc: Secretary of State Doug LaFollette
Revisor of Statutes Gary Poulson



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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

May 30, 2001

The Honorable Fred Risser
Senate President
State Capitol Building, Room 220 South
Madison, WI 53702

The Honorable Scott Jensen
Assembly Speaker
State Capitol Building, Room 211 West
Madison, WI 53702

Dear President Risser and Speaker Jensen:

The Joint Committee for the Review of Administrative Rules met in Executive Session on May 30, 2001 and adopted the following motions:

Emergency Rule DFI 5

Relating to: adopting for use in Wisconsin the Investment Advisor Registrar Depository.

Moved by Representative Grothman, seconded by Representative Turner that, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extends DFI 5 at the request of Department of Financial Institutions by 60 days.

Ayes: (10) Representatives Grothman, Seratti,
Gunderson, Turner, and Hebl; Senators Robson, Grobschmidt,
Hansen, Schultz and Cowles.

Noes: (0)
Absent: (0)

Motion Carried 10 Ayes, 0 Noes, 0 Absent.

Emergency Rule COMM 10

Relating to flammable and combustible liquids. Submitted by the Department of Commerce.

Moved by Representative Grothman, seconded by Representative Turner that, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extends Comm 10 at the request of Department of Commerce by 60 days.

Ayes: (10) Representatives Grothman, Seratti,
Gunderson, Turner, and Hebl; Senators Robson, Grobschmidt,
Hansen, Schultz and Cowles.

Noes: (0)
Absent: (0)

Motion Carried 10 Ayes, 0 Noes, 0 Absent.

Emergency Rule NR 47

Relating to: the federal cost sharing program to suppress gypsy moths.

Moved by Representative Grothman, seconded by Representative Turner that, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extends NR 47 at the request of Department of Natural Resources by 60 days.

Ayes: (10) Representatives Grothman, Seratti, Gunderson, Turner, and Hebl; Senators Robson, Grobschmidt, Hansen, Schultz and Cowles.

Noes: (0)

Absent: (0)

Motion Carried

10 Ayes, 0 Noes, 0 Absent.

Pursuant to s. 227.24(2)(c), stats., as treated by 1997 Wisconsin Act 185, please forward a copy of this notice to the chairperson of the standing committee in your respective house most likely to have jurisdiction over the Clearinghouse Rule corresponding to this emergency rule.

Sincerely,



Senator Judith B. Robson
Senate Co-Chair



Representative Glenn Grothman
Assembly Co-Chair

JBR:GSG:mjg

August 20, 2001

Senator Judith Robson
Co-Chairman
Joint Committee for Review of Administrative Rules
Room 15 South, State Capitol
Madison, WI 53707-7882

Representative Glenn Grothman
Co-Chairman
Joint Committee for Review of Administrative Rules
Room 125 West, State Capitol
Madison, WI 53708-8952

Dear Senator Robson and Representative Grothman:

As you know, the Department adopted an emergency rule on April 23, 2001, amending certain provisions of ch. Comm 113 relating to the allocation of volume cap on tax-exempt private activity bonds taking into account recent changes in federal law. The emergency rule will expire on September 23, 2001, unless an extension is granted.

Since adoption, the Department submitted the rule to the Wisconsin Legislative Council and held a hearing on the emergency rule. Subsequently, the Department has filed a rule in final draft form (Clearinghouse Rule Number 01-070) for legislative review. However, legislative review will not be completed and the Department will not be in a position to adopt the permanent rule and have it in effect before the emergency rule is set to expire on September 23, 2001.

The Joint Committee for Review of Administrative Rules (JCRAR) requests that agencies make formal extension requests in advance of the expiration of an emergency rule. In light of these facts, we respectfully request an extension of the emergency rule under S. 227.24 (2), Stats., until the permanent rule takes effect in order to preserve the public peace and provide a smooth and orderly transition from the emergency rule to the permanent rule.

If you have any questions regarding our progress to date or this request, please don't hesitate to contact us. Thank you in advance for your consideration of our request.

Sincerely,


Brenda J. Blanchard
Secretary

DEPARTMENT OF COMMERCE
EMERGENCY RULE RELATING TO THE
ALLOCATION OF VOLUME CAP
ON TAX-EXEMPT PRIVATE ACTIVITY BONDS.

Finding of Emergency and Rule Analysis

The Department of Commerce finds that an emergency exists and that the adoption of the rule included in this order is necessary for the immediate preservation of public health, safety and welfare.

Analysis of Rules

Statutory Authority: ss.560.02(4) and 560.032, Stats.

Statutes Interpreted: s. 560.032, Stats.

Pursuant to s.560.032, Stats., the Department of Commerce (Commerce) is responsible for administering the allocation of volume cap. The emergency rule is being adopted to incorporate in the administrative code recent changes to the Internal Revenue Code (Section CFR 146) which increases state volume cap limits on tax-exempt private activity bonds. The year 2000 limit was \$50 per resident of the state. For the year 2001 the limit has been raised to \$62.50; for the year 2002, the limit will be \$75.00; and thereafter, the limit will be indexed to inflation. The rule identifies a formula for the allocation of volume cap for the year 2001 and future years. This emergency rule outlines the distribution of the volume cap between the State Building Commission, the Wisconsin Housing and Economic Development Authority, and Commerce. The rules are also being revised to provide an allocation process that will allow Commerce to be more responsive to the needs of businesses as changes occur in the state's economy.

Contact Person

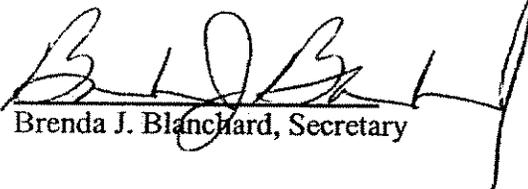
William Wheeler, Director

608-267-2045

ORDER

Pursuant to Section 227.24, Stats., the Department of Commerce hereby adopts an emergency rule to repeal 113.02 (1), 113.041, 113.06(2); to renumber 113.02(2), 113.07(1)(k); to amend ss. Comm 113.06(1), 113.06(4)(a), 113.07(2); 113.07(3), 113.07(4); to repeal and recreate Comm 113.03; and to create ss. Comm 113.02(2), 113.02(19), 113.07(1)(k), 113.07(1)(l) relating to the allocation of volume cap on tax exempt private activity bonds. This emergency rule takes effect upon publication in the official state newspaper and filing with the Secretary of State and Revisor of Statutes.

Dated at Madison, Wisconsin, this 23rd
th
day of April, A.D. 2001,
By the Department of Commerce



Brenda J. Blanchard, Secretary

SECTION 1. Comm 113.02 (1) is repealed.

SECTION 2. Comm 113.02 (2) is renumbered (1).

SECTION 3. Comm 113.02 (2) is created to read:

Comm 113.02 (2) "Brownfields" means abandoned, idle or underused industrial or commercial facilities or sites, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination.

SECTION 4. Comm 113.02 (19) is created to read:

Comm 113.02 (19) "WHEDA" means the Wisconsin Housing and Economic Development Authority.

SECTION 5. Comm 113.03 is repealed and recreated to read:

Comm 113.03 Allocation to WHEDA. (1) There is allocated annually to WHEDA 50% of the base level established by the total amount of unified volume cap for the year 2000, less the \$10 million set aside for the building commission, plus a percentage of the total increase above that base in volume cap as follows: 2001 (75%), 2002 (70%), 2003 (65%), 2004 (60%). In the year 2005, and thereafter, WHEDA shall be allocated 50% of the total amount of unified volume cap less the amount allocated to the building commission under s. Comm 113.04.

(2) The volume cap allocated to WHEDA shall be further allocated to local issuers by WHEDA under sub. (3) or utilized by WHEDA for single-family housing bonds, multi-family housing bonds and beginning farmer bonds. WHEDA shall certify to the department promptly after issuance of any private activity bonds the total amount of the bonds issued pursuant to this allocation

(3) From the volume cap allocated under sub. (2), WHEDA shall, until October 1 each year, set aside \$15 million in volume cap for local issuers of multi-family housing bonds pursuant to guidelines established by WHEDA and approved by the department. WHEDA shall consider requests in excess of the set aside until October 1 each year.

SECTION 6. Comm 113.041 is repealed.

SECTION 7. Comm 113.06(1) is amended to read:

Comm 113.06 Department's allocation; allocation process. (1) There is allocated to the department the remainder of the annual unified volume cap, including any amount that is surrendered, transferred or terminated under ss. Comm 113.04, or 113.06 (6), or 113.07 (6), which shall be allocated for issuer-owned project bonds, economic development bonds and other private activity bonds, but not for single family housing bonds or multi-family housing bonds. In the year 2005 and thereafter, for any unified volume cap transferred under s. Comm 113.04, the department shall allocate 50% of the volume cap to WHEDA. The department will annually develop an allocation plan, which may include but not be limited to specific set-asides for exempt environmental projects and specific targeted industries.

(a) The department shall conduct a review and evaluation of each project in accordance with the annual allocation plan. The business must submit through a Commerce Area Development Manager a completed prospect data sheet.

(b) The department shall evaluate the project based upon the following:

1. The project serves a public purpose.
2. The project will likely retain or increase employment in this state.
3. The project will likely positively affect an area's economic distress.

(c) In making a determination, the council and the department shall consider all of the following:

1. The extent of poverty, unemployment or other factors contributing to general economic hardship in the area.
2. The prospects for new investment and economic development in the area.
3. The amount of investment that is likely to result from the project.
4. The number of jobs that are likely to be retained or created as a result of the project.
5. The competitive effect of the allocation of unified volume cap on other businesses in the area.
6. Whether the project will result in dislocation of a business from one municipality to another.

7. Whether the project will result in the redevelopment of a brownfield site.

8. Whether the project is likely to occur or continue without allocation of the unified volume cap.

9. The financial soundness of the business.

10. The ability of the eligible recipient to repay the bond.

11. Any other factors that the department considers relevant.

(d) If a determination is made to recommend the project for an allocation of volume cap, the department will send a proposal letter to the business indicating the amount of volume cap and any other conditions that the department has determined must be met. If the business accepts the proposal in writing, the business may then proceed with the volume cap allocation process on behalf of the issuer.

SECTION 8. Comm 113.06 (2) is repealed.

SECTION 9. Comm 113.06 (4) (a) is amended to read:

Comm 113.06 (4) (a) Each issuer shall notify the department in writing as to the amount of obligations issued pursuant to the allocation within 5 business days after the issuance of bonds and as a part of the notification, make a payment by cash or cashiers check to the department equal to ~~3~~ 10 one hundredths of one percent of the amount of the obligations issued pursuant to the allocation.

SECTION 10. Comm 113.07 (1) (k) is renumbered (m):

SECTION 11. Comm 113.07 (1) (k) is created to read:

(k) A written, signed commitment letter from a financial institution indicating a commitment to purchase or place the obligations upon delivery by the issuer.

SECTION 12. Comm 113.07 (1) (l) is created to read:

(l) Documents or information submitted with an application that contain trade secret information, social security or FEIN numbers, private financial information, or tax documents or information are not subject to public disclosure.

SECTION 13. Comm 113.07 (2) is amended to read

~~(2) Upon receipt of a completed prospect data sheet application, the department shall evaluate whether it meets the requirements of sub. (3) and score the application based upon a comparative ranking with other applications received. Comparative rankings shall be based upon the department's consideration of the factors in subs. (3) and (4). The department may establish a cutoff score for applications submitted to the council and the secretary for consideration and approval.~~

SECTION 14. Comm 113.07 (3) is amended to read:

(3) The council and the department may approve an allocation of the unified volume cap if they determine all of the following:

- (a) The project serves a public purpose.
- (b) The project will likely retain or increase employment in this state.
- (c) The project will likely positively affect an area's economic distress.

~~1. The unemployment rate in the area is higher than the state average for the 18 months immediately preceding the date on which the application under sub. (1) was submitted to the department.~~

~~2. The percentage of persons residing in the area who are members of households with household income levels at or below 80% of the statewide median household income is higher than the state average.~~

~~3. The percentage of households in the area receiving unemployment compensation under ch. 108, Stats. or relief funded by a relief block grant under ch. 49, Stats. is higher than the state average.~~

~~4. In the 36 months immediately preceding the date on which the application under sub. (1) was submitted to the department, a number of workers in the area were permanently laid off by their employer or became unemployed as a result of a business action subject to s. 109.07 (1m), Stats.~~

~~5. An employer in the vicinity of the area has given public notice under s. 109.07 (1m), Stats. of either a business closing or a mass layoff of at least 25 employees, or 25% of the employees, of a business whichever is greater, that will result in a number of workers in the area being laid off permanently.~~

~~6. Property values in the area have been declining.~~

~~7. There has been a decline in the population in the area.~~

SECTION 15. Comm 113.07 (4) is amended to read:

(4) In making a determination under sub. (3), the council and the department shall consider all of the following:

(a) The extent of poverty, unemployment or other factors contributing to general economic hardship in the area.

(b) The prospects for new investment and economic development in the area.

(c) The amount of investment that is likely to result from the project.

(d) The number of jobs that are likely to be retained or created as a result of the project.

~~(e) The number of jobs that are likely to be made available as a result of the project to persons who are recipients of unemployment compensation under ch. 108, Stats. or relief funded by a relief block grant under ch. 49, Stats.~~

~~(f)~~ (e) The competitive effect of the allocation of unified volume cap on other businesses in the area.

~~(g)~~ (f) Whether the project will result in dislocation of a business from one municipality to another.

~~(h)~~ (g) Whether the project will result in the redevelopment of a brownfield site.

~~(i)~~ (h) Whether the project is likely to occur or continue without allocation of the unified volume cap.

~~(j)~~ (i) Any other factors that the department and the council consider relevant.

(END)

SENATOR JUDITH B. ROBSON
Co-CHAIR



REPRESENTATIVE GLENN GROTHMAN
Co-CHAIR

P.O. Box 7882
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(608) 266-2253

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MADISON, WI 53708-8952
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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

September 28, 2001

The Honorable Fred Risser
Senate President
State Capitol Building, Room 220 South
Madison, WI 53702

The Honorable Scott Jensen
Assembly Speaker
State Capitol Building, Room 211 West
Madison, WI 53702

Dear President Risser and Speaker Jensen:

The Joint Committee for the Review of Administrative Rules met in Executive Session on September 20, 2001 and adopted the following motions:

Emergency Rule COMM 113

Relating to the annual allocation of volume cap on tax-exempt private activity bonds. Submitted by the Department of Commerce.

September 20, 2001

EXECUTIVE SESSION/POLLING HELD

Present: (7) Representatives Grothman, Gunderson, and Turner; Senators Robson, Grobschmidt, Cowles, and Welch

Absent: (3) Representatives Seratti and Hebl; Senator Hansen

Moved by Representative Grothman, seconded by Senator Grobschmidt that, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extend the effective date of COMM 113 by 60 days, at the request of the Department of Commerce.

Ayes: (10) Representatives Grothman, Gunderson, Seratti*, Turner and Hebl*; Senators Robson, Grobschmidt, Hansen*, Cowles, and Welch.

Noes: (0)

Motion Carried: Extension Granted.
10 Ayes, 0 Noes *voted by polling

Clearinghouse Rule 00-091

Relating to licensing of emergency medical technicians-paramedic and approval of emergency medical technician-paramedic operational plans. Submitted by the Department of Health and Family Services. Objected to in part and referred by the Senate Committee on Health, Utilities, Veterans and Military Affairs.

Moved by Representative Grothman, seconded by Senator Welch that,

1. The Joint Committee for Review of Administrative Rules rescinds a part of its objection to Clearinghouse Rule 00-091. The original objection was made on August 30, 2001 and was directed to all but the first sentence of proposed s. HFS 112.07 (2) (u) 1. a. The Joint Committee, by taking this partial rescission of its previous action, restores the following language to Clearinghouse Rule 00-091:

A single paramedic, licensed registered nurse, licensed physician assistant, or physician performing in the staffing configuration specified in this paragraph may perform all of the skills authorized under s. HFS 112.04 (4) for EMTs-paramedic.

2. The cochairpersons of the Joint Committee for Review of Administrative Rules will, by written communication to the Department of Health and Family Services, indicate the Joint Committee's desire and expectation that the unobjected to portion of Clearinghouse Rule 00-091 will be promulgated promptly so that, among other things:
 - a. The provision of paramedic services will be expedited in those areas of Wisconsin currently without such services.
 - b. A paramedic will be able to provide full paramedic services.

Ayes: (10) Representatives Grothman, Gunderson, Seratti*, Turner and Hebl*; Senators Robson, Grobschmidt, Hansen*, Cowles, and Welch.

Noes: (0)

Motion Carried. 10 Ayes, 0 Noes *voted by polling

LRB 3716 and 3717

Relating to licensing of emergency medical technicians-paramedic and approval of emergency medical technician-paramedic operational plans.

Moved by Senator Grobschmidt, seconded by Senator Cowles that, pursuant to s. 227.19(5)(e), Stats., the Joint Committee for Review of Administrative Rules introduces LRB 3716/2 and LRB 3717/2.

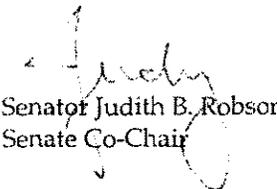
Ayes: (8) Representatives Gunderson, Turner and Hebl*; Senators Robson, Grobschmidt, Hansen*, Cowles, and Welch.

Noes: (2) Representatives Grothman and Seratti.

Motion Carried. 8 Ayes, 2 Noes *voted by polling

Pursuant to s. 227.24(2)(c), stats., as treated by 1997 Wisconsin Act 185, please forward a copy of this notice to the chairperson of the standing committee in your respective house most likely to have jurisdiction over the Clearinghouse Rule corresponding to this emergency rule.

Sincerely,


Senator Judith B. Robson
Senate Co-Chair

JBR:GSG:mjg


Representative Glenn Grothman
Assembly Co-Chair

SENATOR JUDITH B. ROBSON
CO-CHAIR



REPRESENTATIVE GLENN GROTHMAN
CO-CHAIR

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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

September 21, 2001

Phil Albert, Acting Secretary
Department of Commerce
123 West Washington Avenue
Madison, WI 53707-7970

Dear Secretary Albert:

The Joint Committee for the Review of Administrative Rules met in Executive Session on September 20, 2001 and adopted the following motion:

Emergency Rule COMM 113

Relating to the annual allocation of volume cap on tax-exempt private activity bonds. Submitted by the Department of Commerce.

September 20, 2001

EXECUTIVE SESSION/POLLING HELD

Present: (7) Representatives Grothman, Gunderson, and Turner; Senators Robson, Grobschmidt, Cowles, and Welch
Absent: (3) Representatives Seratti and Hebl; Senator Hansen

Moved by Representative Grothman, seconded by Senator Grobschmidt that, pursuant to s. 227.24(2)(a), Stats., the Joint Committee for Review of Administrative Rules extend the effective date of COMM 113 by 60 days. at the request of the Department of Commerce.

Ayes: (10) Representatives Grothman, Gunderson, Seratti*, Turner and Hebl*; Senators Robson, Grobschmidt, Hansen*, Cowles, and Welch.

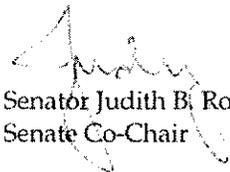
Noes: (0)

Motion Carried: Extension Granted.

10 Ayes, 0 Noes *voted by polling

Pursuant to s 227.24(2)(c) Stats, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,



Senator Judith B. Robson
Senate Co-Chair



Representative Glenn Grothman
Assembly Co-Chair

JBR:GSG:mjg

cc: Secretary of State Doug LaFollette
Revisor of Statutes Gary Poulson